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**LAW OFFICES OF
LOUIS E. GITOMER, LLC.**

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MELANIE B. YASBIN
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410-296-2255

RECEIVED
AUG 22 2012
MANAGEMENT
600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 • (202) 466-6532
FAX (410) 332-0885

FEE RECEIVED
AUG 22 2012
**SURFACE
TRANSPORTATION BOARD**

August 22, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Docket No. AB-55 (Sub-No. 725X), *CSX Transportation, Inc—Discontinuance
Exemption—Raleigh County, WV*

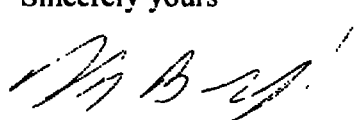
Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Petition for Exemption to exempt, under 49 U.S.C. 10502, CSX Transportation, Inc's discontinuance of service over a 13.5-mile rail line owned by Norfolk Southern Railway Company between milepost 12.0 and milepost 25.5, in Raleigh County, WV. from the prior approval requirements of 49 U.S.C. 10903, and a disc containing a WORD version of the Petition and a pdf. Please charge the filing fee to the credit card submitted separately.

Please time and date stamp the extra copy of this letter and the Petition for Exemption and return it with the messenger. Thank you for your assistance.

If you have any questions, please call or email me.

Sincerely yours



Melanie B. Yasbin
Attorney for: CSX Transportation, Inc.

FILED
AUG 22 2012
**SURFACE
TRANSPORTATION BOARD**
Enclosure

**ENTERED
Office of Proceedings**

AUG 22 2012

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 725X)

CSX TRANSPORTATION, INC.
--DISCONTINUANCE EXEMPTION--
RALEIGH COUNTY, WV

PETITION FOR EXEMPTION

FEE RECEIVED

AUG 22 2012

**SURFACE
TRANSPORTATION BOARD**

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

Attorneys for: CSX TRANSPORTATION, INC.

Dated: August 22, 2012

FILED

AUG 22 2012

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

AUG 22 2012

**Part of
Public Record**

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JUL 22 2012
MAIL ROOM

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 725X)

CSX TRANSPORTATION, INC.
--DISCONTINUANCE EXEMPTION--
RALEIGH COUNTY, WV

PETITION FOR EXEMPTION

CSX Transportation, Inc. ("CSXT") petitions the Surface Transportation Board ("Board") to exempt, under 49 U.S.C. § 10502, 49 CFR Part 1121, and 49 CFR Part 1152, Subpart G. CSXT's discontinuance of service over a 13.5-mile rail line from the prior approval requirements of 49 U.S.C. § 10903.

PROPOSED TRANSACTION

CSXT proposes to discontinue service over the approximately 13.5-mile rail line between milepost WG 12.0, near Helen and milepost WG 25.5 at McVey (the "Line"), all in Raleigh County, WV.¹ The Line is owned by Norfolk Southern Railway Company ("NS") and

¹ Because this petition proposes a discontinuance of service rather than an abandonment, the Board typically does not consider Offers of Financial Assistance under 49 U.S.C. §10904 for acquisition of the Line, trail use requests under 16 U.S.C. §1247(d), or requests under 49 U.S.C. §10905 to negotiate for public use of the Line. See *Progressive Rail Inc.—Discontinuance of Service Exemption—In Barron County, WI*, STB Docket No. AB-1101X, (STB served July 25, 2012); *Mfrs. Ry.—Discontinuance Exemption—In St. Louis County, MO*, STB Docket No. AB-1075X (STB served July 12, 2011); and *Northern Lines Railway, LLC—Discontinuance of Service Exemption—In Stearns County, MN*, STB Docket No. AB-1011 (Sub-No. 1X) (STB served May 20, 2011).

has been operated by CSXT since 1996 under a lease from NS.² NS intends to resume operating the Line itself and CSXT will continue to operate over the portion of the Line between.

A map of the Line is attached as Exhibit A.

The Line traverses U.S. Postal Service ZIP code 25915, 25920, 25823, and 25827. To the best of CSXT's knowledge, the Line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

A draft Federal Register notice is attached as Exhibit B. Pursuant to 49 CFR §1105.12, notice of the proposed discontinuance was published on August 10, 2012, in the Register-Herald, a newspaper of general circulation in Raleigh County. A copy of the notice is attached as Exhibit C.

BACKGROUND

CSXT leased the Line from NS. Under the Lease NS may, upon 30 days written notice, terminate the Lease at its sole discretion, provided that NS offers trackage rights or another appropriate agreement to CSXT that would allow CSXT to continue operating between milepost WG 12.0 near Helen and WG 23.6 at Pemberton for CSXT's own purposes and with its own trains and crews. In a letter dated May 16, 2011, NS invoked its termination rights under the Lease. *See* Exhibit D. On July 26, 2012, CSXT filed a Notice of Exemption to acquire trackage rights over NS from approximately milepost WG 12.0 near Helen to milepost WG 23.6 at Pemberton.³ CSXT recognizes that it retains rights and obligations to provide common carrier service between Helen and McVey pursuant to the Lease until CSXT receives and consummates

² CSXT received authority to lease and operate the Line from NS's predecessor in *CSX Transportation, Inc.—Lease and Operation Exemption—Norfolk and Western Railway Company*, ICC Finance Docket No. 32768 (ICC served October 27, 1995). The Lease was amended in 1996. Both the Lease and the amendment will be referred to together as the "Lease".

discontinuance authority from the Board under 49 U.S.C. §10903. Therefore, in this proceeding, CSXT seeks authority from the Board to discontinue service over the Line under the Lease. NS will resume operations over the Line. CSXT will continue to serve the portion of the portion of the Line between Helen and Pemberton pursuant to trackage rights. No shipper will lose railroad service.

ARGUMENT SUPPORTING THE DISCONTINUANCE OF SERVICE

Because of the termination notice, CSXT requests that the Board exempt the proposed discontinuance under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903.

Under 49 U.S.C. § 10903, a rail carrier may not discontinue service over a rail line without prior approval from the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect customers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's

³ See Finance Docket No. 35626, *CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern*

predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep No. 1430, 96 the Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the preparation and filing of a formal discontinuance of service application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. § 10101 (2) and (7). By allowing CSXT to discontinue its common carrier obligation under the Lease now that the NS has terminated the Lease and by allowing NS to resume operation on the Line with CSXT also providing overhead and local service via trackage rights over the portion of the Line between Helen and Pemberton an exemption will foster sound economic conditions and encourage efficient management. 49

U.S.C. § 10101 (5) and (9). Other aspects of the rail transportation policy are not adversely affected.

B. This Transaction Is Of Limited Scope

The proposed transaction is of limited scope. The Line is only 13.5 miles long. By its nature the impact of the proposed discontinuance is of limited scope, the Line will continue to be operated by NS and by CSXT via trackage rights over a portion of the Line following CSXT's discontinuance of service under the Lease. The length of the Line, its limited geographic area (one county in one State), and the limited impact of the discontinuance on the Line, all demonstrate the limited scope of CSXT's proposed abandonment.

C. This Transaction Will Not Result In An Abuse Of Market Power

With transportation alternatives available, CSXT's discontinuance of service over the Line under the Lease will not result in an abuse of market power. NS will resume operations on the Line and CSXT will continue to provide overhead and local service via trackage rights over the portion of the Line between Helen and Pemberton.

ENVIRONMENTAL AND HISTORICAL REPORTING REQUIREMENTS

Because CSXT is seeking to discontinue service, following which NS will continue to operate the Line and CSXT will have overhead and local trackage rights, environmental reporting requirements under 49 CFR 1105.6(c) do not apply. Also in accordance with 49 CFR 1105.8(b), no historic documentation is required because NS owns and will continue to operate the Line. Discontinuance will not result in physical changes to the Line. Further Board approval would be required for NS to abandon service and CSXT understands that NS plans to begin serving the Line. *Mfrs. Ry.—Discontinuance Exemption—In St. Louis County, MO*, STB Docket No. AB-1075X (STB served July 12, 2011); *Missouri & Valley Park Railroad—Discontinuance of*

Service Exemption—In St. Louis County, MO, STB Docket No. AB-1057X. (STB served June 15, 2010); and *Central Illinois Railroad—Discontinuance of Service Exemption—In Cook County, IL.*, STB Docket No. AB-1066 (Sub-No. 2X) (STB served November 16, 2010) (environmental and historic reporting not required where owner of line is required to continue providing common carrier service on the line).

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached hereto as Exhibit B.

LABOR PROTECTION

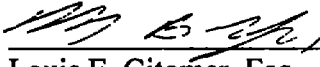
The interests of railroad employees of CSXT who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously shown. Nor is Board regulation required to protect customers from the abuse of market power. Moreover, this discontinuance of service is of limited scope. Accordingly, CSXT respectfully requests the Board grant this petition for exemption.

Respectfully Submitted,

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229



Louis E. Gitomer, Esq.
Melanie B. Yasbin
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: CSX TRANSPORTATION, INC.

Dated: August 22, 2012

CERTIFICATE OF SERVICE


Pursuant to 49 C.F.R. § 1152.60(d)(2), the undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-55 (Sub-No. 725X) was mailed via first class mail on August 22, 2012, to the following parties:

Public Service Commission of West Virginia
201 Brooks Street
Charleston, WV 25301

Transportation Engineering Agency
Military Surface Deployment and Distribution Command
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, 62225

Chief, Conservation and Outdoor Recreation Division
Rivers, Trails and Conservation Program
National Park Service
U.S. Department of the Interior
1849 C Street, N.W. (Org Code 2220)
Washington, DC 20240

Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250



Melanie B. Yasbin
August 22, 2012

EXHIBIT A

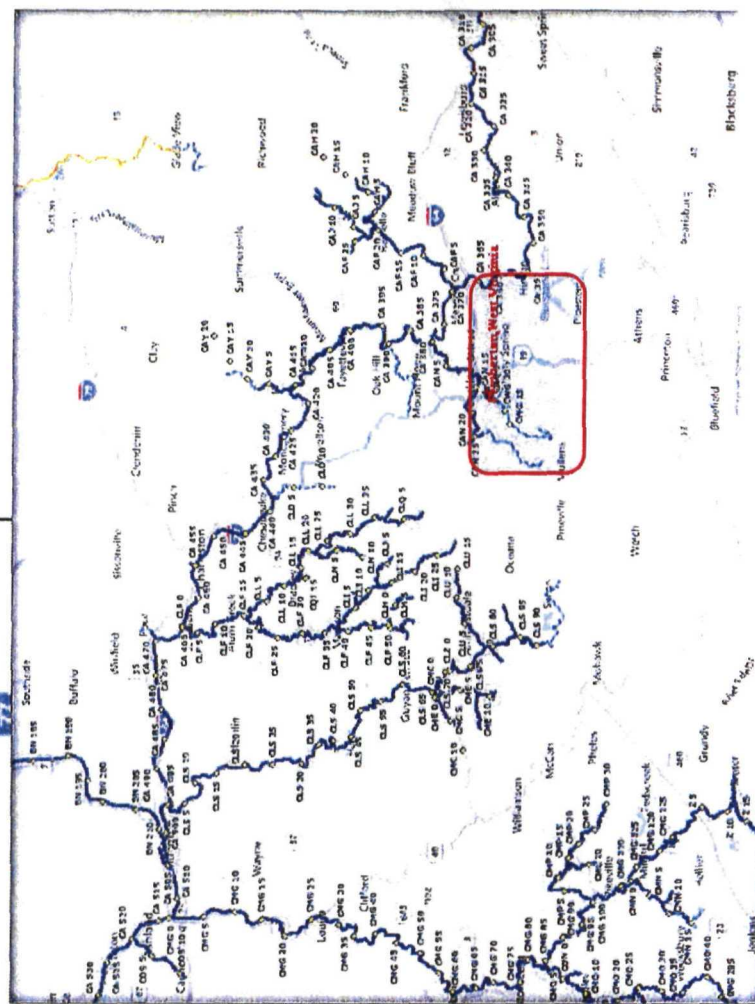
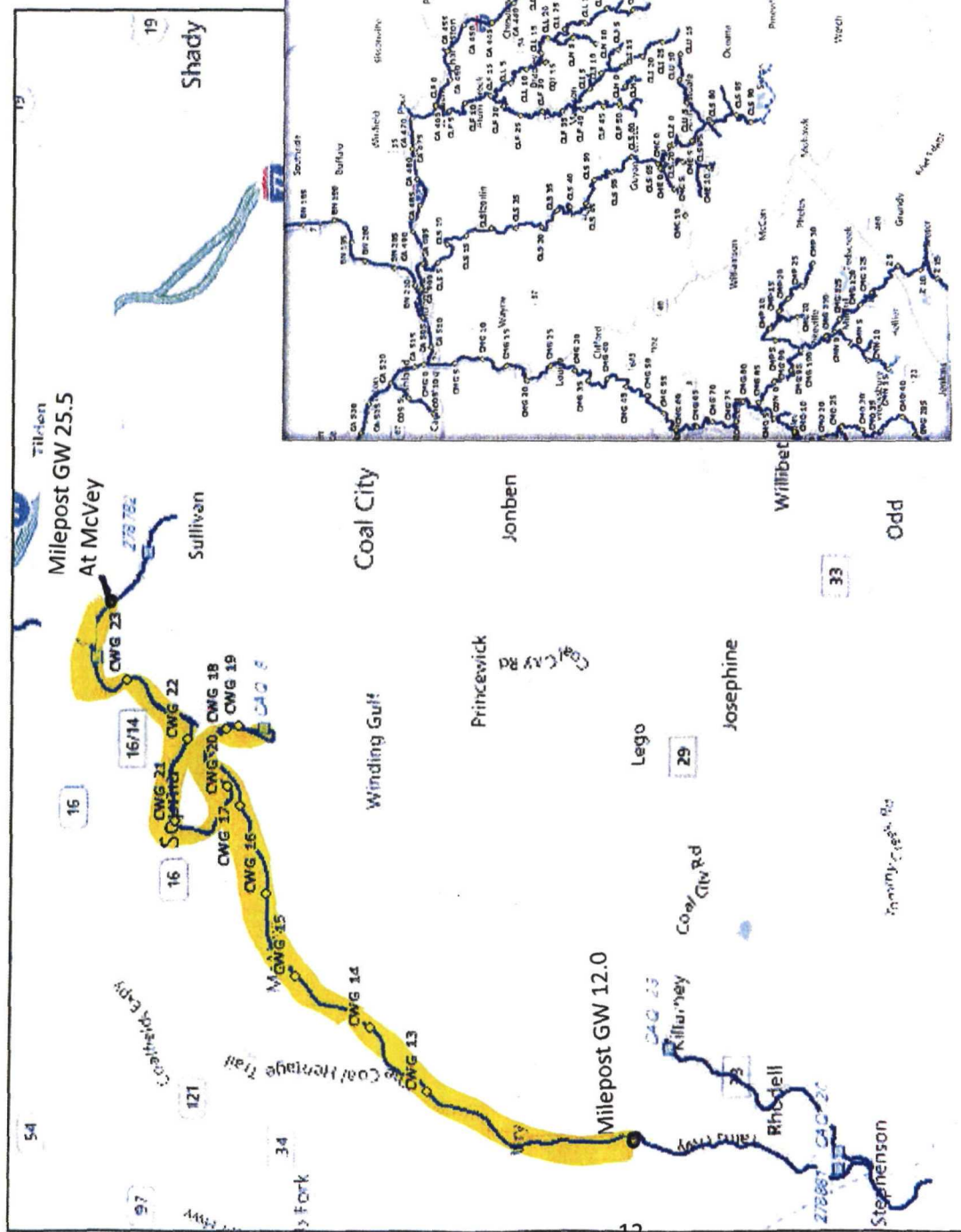


EXHIBIT B

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 725X)

CSX TRANSPORTATION, INC.
--DISCONTINUANCE EXEMPTION--
RALEIGH COUNTY, WEST VIRGINIA

Notice of Petition for Exemption to Discontinue Service

On August 22, 2012 CSX Transportation, Inc. ("CSXT") filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for discontinuance of service over a 13.5-mile rail line between milepost WG12.0, near Helen and milepost WG25.5 at McVey, in Raleigh County, WV, all of which traverses through United States Postal Service ZIP Codes 25915, 25920, 25823, and 25827 (the "Line"). There are no stations on the Line.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8.

The interest of railroad employees of CSXT will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by XXXXXX.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB-55 (Sub-No. 725X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Melanie B. Yasbin, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Congressional and Public Services at (202) 245-0230 or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____, 2012.

By the Board,

EXHIBIT C

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-55 (Sub-No. 725X) was advertised on August 10, 2012 in the Register-Herald a newspaper of general circulation in Raleigh, WV, as required by 49 C.F.R. § 1105.12.



Melanie B. Yasbin

August 22, 2012

**AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS
BECKLEY, WEST VIRGINIA 25801**

08/10/2012

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Tara Meyer, being duly sworn upon my oath, do depose and say that I am Legal Advertising Clerk for Beckley Newspapers, a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia: that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area of areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices; that the annexed notice

of PUBLIC NOTICE

(Description of notice)

was duly published in said newspaper once a week for 1 successive

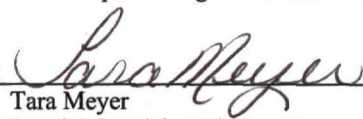
weeks (Class 1), commencing with the issue of 08/10/2012

and ending with the issue of 08/10/2012, that said annexed notice was

published on the following dates: 08/10/2012,

and that the cost of publishing said annexed notice as aforesaid was \$ 64.94

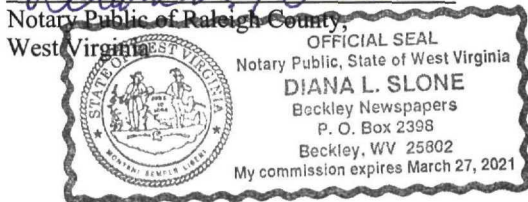
Signed


Tara Meyer
Legal Advertising Clerk
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this day:
08/10/2012

My commission expires March 27, 2021


Notary Public of Raleigh County,
West Virginia



**COPY OF PUBLICATION
NOTICE**

CSX Transportation, Inc. ("CSXT") gives notice that on or about August 13, 2012 it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the discontinuance of a 13.5-mile railroad line between milepost WG12.0, near Helen and milepost WG25.5 at McVey which traverses through United States Postal Service ZIP Codes 25915, 25920, 25823, and 25827 in Raleigh County, WV (the "Line"). The proceeding has been docketed as No. AB-55 (Sub-No. 725X). CSXT has been operating the Line since 1995 pursuant to a lease from Norfolk Southern Railway Company ("NS"). CSXT intends to terminate service under the lease. NS will resume service over the Line and CSXT will continue to serve a portion of the Line via overhead and local trackage rights.

This discontinuance of service is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Chief, Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the Board's Office of Congressional and Public

EXHIBIT D



Norfolk Southern Corporation
Transportation Department
1200 Peachtree Street, NE
Atlanta, Georgia 30309
FAX: (404) 582-5556

Mark M. Owens
Senior Director Joint Facilities
(404) 529-1041
e-mail: mmowens@nscorp.com

VIA FEDERAL EXPRESS

CSX Transportation, Inc.
Virginia Beck
Director Passenger and Joint Facility Agreements
500 Water Street J315
Jacksonville, FL 32202

May 16, 2011

RE: Termination of Lease Agreement between Norfolk and Western Railway Company (predecessor to Norfolk Southern Railway Company, "NS") and CSX Transportation, Inc. ("CSXT") dated January 26, 1995, as supplemented by that certain Supplemental Agreement between NS and CSXT dated June 19, 1996 (the "Lease Agreement")

Dear Virginia:

Pursuant to Article 12 of the Lease Agreement, NS hereby terminates and cancels the Lease Agreement effective thirty (30) days from the date hereof. In accordance with Article 12, NS hereby offers to CSXT, by means of the enclosed draft trackage rights agreement, the right to use the Track Facilities (as defined in the Lease Agreement) between MP WG12.0, near Helen, and MP WG23.6 at Pemberton, for its own purposes with its own trains and crews.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark M. Owens".

Mark M. Owens